
STATUTORY INSTRUMENTS

1994 No. 3046

THE COURT OF PROTECTION RULES 1994

**PART VI
EVIDENCE**

Affidavit evidence

29.—(1) Except where these Rules provide otherwise, evidence in proceedings governed by these Rules shall be given by affidavit.

(2) An affidavit for use in proceedings under these Rules may be sworn—

- (a) in England or Wales, before any person authorised to take affidavits under the Commissioners for Oaths Acts 1889 and 1891⁽¹⁾, under the Solicitors Act 1974⁽²⁾, or under the Courts and Legal Services Act 1990⁽³⁾ or before any officer of the court of, or above, the rank of higher executive officer;
- (b) outside England and Wales, before any person before whom an affidavit may be sworn for use in the Supreme Court.

Unsworn evidence

30.—(1) Notwithstanding rule 29(1), the court may accept and act upon a statement of facts or such other evidence, whether oral or written, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.

(2) The court may give directions as to the manner in which a statement of facts or other written evidence under paragraph (1) above is to be given but subject to such directions any such statement or other evidence shall—

- (a) be drawn up in numbered paragraphs and dated; and
- (b) be signed by the person by whom it is made or given.

Written questions to Visitors

31.—(1) Where a Visitor's report, or information contained in such a report, has been disclosed to any person in pursuance of section 103(8) of the Act, the court may, on the application of any person who appears to the court to be interested, give leave for written questions relevant to the issues before the court to be put to the Visitor by whom the report was made.

(2) The questions sought to be put to the Visitor shall be submitted to the court, which may put them to the Visitor with such amendments, if any, as it thinks fit and the Visitor shall give his replies in writing to the questions so put.

(1) 1889 c. 10; 1891 c. 50.
(2) 1974 c. 47.
(3) 1990 c. 41.

(3) The court may disclose the replies given by a Visitor under this rule to any person who appears to the court to be interested, or to his legal or medical adviser, on such conditions, if any, as it thinks fit.

(4) No Visitor shall be required to give written evidence for the purpose of any proceedings to which these Rules relate, other than in accordance with this rule.

Cross-examination of deponent

32. Any person who has made an affidavit or given a certificate or other written evidence for use in proceedings under these Rules may be ordered by the court to attend for cross-examination.

Administration of oaths

33. The court may direct that an oath be administered to any witness or interpreter in any proceedings before the court.

Filing of written evidence

34.—(1) Before an affidavit, certificate or other written evidence is used in any proceedings under these Rules it shall be filed but the court may make an order on the basis of such evidence before it is filed if the person tendering it undertakes to file it before the order is drawn up.

(2) There shall be endorsed on every affidavit, certificate or other written evidence the name and address of the solicitor, if any, for the person on whose behalf it is filed.

Use of evidence in subsequent proceedings

35.—(1) Except where the court otherwise directs, evidence which has been used in any proceedings relating to a patient may be used at any subsequent stage of those proceedings or in any other proceedings relating to the same patient or to another member of the patient's family.

(2) Without prejudice to paragraph (1) above, the Master may, upon application being made for the purpose, authorise the use of any such evidence in any legal proceedings that the Master may specify.

Evidence to be filed on a first application for receiver, etc

36.—(1) On the issue of a first application for the appointment of a receiver for a patient or for a short order or direction under rule 9 authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him receiver, the applicant shall, unless the court or the Public Trustee otherwise directs, file a medical certificate and evidence of family and property.

(2) In this rule—

“a medical certificate” means a certificate by a registered medical practitioner that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs; and

“evidence of family and property” means a certificate or, if the court so orders in a particular case, an affidavit, giving particulars of the patient's relatives, property and affairs and of the circumstances giving rise to the application.

(3) Rule 30(2) above applies to unsworn evidence of family and property as it applies to unsworn evidence generally.

Evidence of patient’s recovery or death

37.—(1) Where at any stage of proceedings relating to a patient the court has reason to believe that the patient has recovered, it may require medical evidence of the recovery to be furnished by such person as it thinks appropriate.

(2) Where at any stage of proceedings relating to a patient, the Public Trustee has reason to believe that the patient has died, he may require evidence of the death to be furnished by such person as he thinks appropriate.

Proof of amount due to public authority

38. The amount due to any public authority for the past maintenance of a patient may, unless the Public Trustee otherwise directs, be proved by the filing of an account certified under the hand of the proper officer of the authority.